(3)

IN THE HIGH COURT OF CHHATTISGARH

AT BILASPUR

Criminal Appeal No. 32 /2003

Appellant : Gadal Kawar, S/o Phirtu Sidar,
(In jail) aged about 30 years,
R/o Sakin Bundeli, Thana malkharoda,
Distt. Janjgir-Champa (C.G.)

VERSUS

Respondents : State of Chhattisgarh
Through P.S. Malkharoda,
Distt. Janjgir-Champa (C.G.)

APPEAL UNDER SECTION 374(2) OF CRIMINAL PROCEDURE CODE

Filed on 04/01/03 (late)
By Shri Pushpendra ..... Advocate

04/01/03 R. to D.R. (J)

(40)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No. 32/03 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	08.08.2006 Appellant-Gadal Kawar by Shri Pushpendra Patel, Advocate. State by Shri Ashish Shukla, Government Advocate. The appeal is heard finally today. 2. The appellant was convicted under Section 450 and 376 (1) of the I.P.C. and sentenced to rigorous imprisonment for five years and a fine of Rs.500/- and in default to undergo additional R.I. for two months under Section 450 I.P.C. and to rigorous imprisonment for 10 years and a fine of Rs.500/- and in default to undergo additional R.I. for two months under Section 376 (1) I.P.C. in Sessions Trial No. 267/2002 by Shri Gautam Chouradia, Additional Sessions Judge, Sakti, District Bilaspur vide judgment dated 19.12.2002. 3. Shri Pushpendra Patel, learned counsel for the appellant submitted at the very outset that he would not assail the impugned judgment dated 19.12.2002 on merits but would argue only on the question of sentence. 4. In view of the submission, this appeal was heard only on the question of sentence.	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

5. Brief facts are that at about 11.00 P.M. on 27.5.2002 in village Jorkhapara Adbhar P.S. Malkharouda the appellant committed house trespass with intent to commit rape on the prosecutrix and thereafter despite stiff resistance by the prosecutrix who was alone in the house committed rape on her. Hearing shouts of the prosecutrix, Rajaram Gabele P.W.4 saw the appellant lying on the road under the influence of liquor. Bhuwanlal P.W.6 asked the appellant who made extra judicial confession of having committed rape on the prosecutrix. The prosecutrix also told him that the appellant had committed rape on her. The prosecutrix went to Police Station Malkharouda situated 12 kilometers north on the next day i.e. 28.5.2002 at 9.35 A.M. and lodged first information report. Upon medical examination, Dr. Lalita Rajnala P.W.7 found abrasions with redness on her left shoulder joint, left elbow joint, back of thorax right side, left side of abdomen. On internal examination, she found that there was a bruise on fold of right side on cervix. She also found bruise on Labia Mejora and redness around Labia Minora. She found small contusion on the back of her left thigh. The prosecutrix also complained of pain on lower part of thigh and also on back of thorax and buttock. It was opined that forceful recent sexual intercourse had been committed with the prosecutrix. The appellant was also

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medically examined by Dr. R.P. Kurre P.W.5 who found him capable of performing sexual intercourse. After completion of investigation, the appellant was prosecuted.

6. The appellant abjured the guilt, pleaded innocence and led no evidence in defence. The prosecution examined as many as 12 witnesses. Relying upon the evidence led by the prosecution, the learned trial Judge convicted and sentenced the appellant as shown in paragraph-2.

7. Shri Pushpendra Patel, learned counsel for the appellant submitted that the appellant committed the offence while being under the influence of liquor, hence, the substantive sentence of rigorous imprisonment for ten years awarded under Section 376(1) I.P.C. should be reduced to minimum sentence provided under Section 376 I.P.C.

8. On the other hand, Shri Ashish Shukla, learned Government Advocate opposed the prayer and contended that considering the manner in which the appellant violently raped a widow after forcibly entering her house late at night and the injuries sustained by the prosecutrix not only on her private parts but also on her person, the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

sentence awarded by the learned trial Judge did not call for any interference.

9. Having heard rival submissions, I have perused the Sessions Case No.267/2002. There is no manner of doubt that the wholly unrebutted testimony of the prosecutrix, a widow, which is fully corroborated by the medical evidence of Dr. Lalita Rajnala P.W.7 as also by the evidence of Bhuwanlal Gabela P.W.6 proved beyond the shadow of doubt that the appellant forcibly entered the house of the prosecutrix late at night on 27.5.2002 and committed rape on her despite stiff resistance offered by her. The injuries sustained by the prosecutrix reflect the violent nature of sexual assault committed by the appellant.

10. Having thus considered the evidence led by the prosecutrix, I am of the considered opinion that conviction of the appellant under Section 450 and 376(1) I.P.C. is well founded and does not call for any interference.

11. So far as the arguments advanced by the learned counsel for the appellant regarding reduction of sentence is concerned, I am of the considered opinion that in view of the violent sexual assault

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	committed by the appellant upon a widow after committing house trespass late at night and the injuries sustained by the prosecutrix during the sexual assault by the appellant, the sentence awarded by the learned trial Judge under Section 450 & 376 (1) I.P.C. did not call for any interference whatsoever. 12. In the result, this appeal being devoid of merit is dismissed. **Sd/-** **Dilip Raosaheb Deshmukh** **Judge**	

Anjani

[पीछे देखिये